

CHARLES V. STUART.

FEBRUARY 3, 1859.—Committed to a Committee of the Whole House, made the order of the day for to-morrow, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

CHARLES V. STUART *vs.* THE UNITED STATES.

1. The petition of the claimant.
2. Depositions filed in the case, and numbered 1, 2, and 3, transmitted to the House of Representatives.
3. Claimant's manuscript brief, transmitted to the House of Representatives.
4. United States Solicitor's brief.
5. Opinion of the Court, adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this third day of February, A. D. 1859.

SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

IN THE UNITED STATES COURT OF CLAIMS.

To the Judges of the Court of Claims of the United States of America, established by the act of Congress approved 24th of February, in the year 1855.

The petition of Charles V. Stuart, a citizen of the State of California, and residing at San Francisco, in the said State, respectfully represents to this honorable Court:

That on the 8th day of January, 1855, your petitioner became the

assignee of a claim against the government of the United States for the sum of \$7,826 06, by reason of having purchased the same in the spring of the year 1853 for a full and valuable consideration, and that your petitioner is the sole and only owner of such claim.

That the claim in question arose as follows: Adam Johnston, sub-Indian agent of the United States, appointed for the State of California, on the 13th April, 1849, made a verbal contract with George G. Belt & Co., merchants and licensed traders in the Indian country, for the supply of beef and other provisions to the Indians of the San Joaquin valley and Tuolumne and Merced rivers; such contract was made in view of the absolute necessity of the case, and in the confident belief that the department had the power to order its payment.

Owing to the exigencies of the service, caused by the large number of Indians being at the aforesaid places, and in a starving condition, the Indian agent considered it his duty to supply them with food in preference to making them gaudy or showy presents, although the latter would have been more pleasing to the eye for them; yet, without food or the means of subsistence, they would, as a matter of necessity, have obtained food by theft, and which would inevitably have resulted in scenes of bloodshed and murder, and have seriously interfered with the prospect of effecting any treaties with them, or of carrying out the humane views and intentions of the United States government towards them; and here your petitioner would respectfully suggest that Mr. Johnston acted with great prudence in the matter by distributing the provisions thus obtained from the merchants before mentioned in rations suitable for immediate use, rather than deliver the Indians cattle, which might, and in so many instances did, stray away, thus depriving the Indian of the benefits resulting from the generosity of the United States government.

Your petitioner further shows that the distribution of provisions by the agent to the Indians commenced early in 1851, and continued up to January, 1852, inclusive, and of which the office of Indian affairs had full and immediate notice, as more fully appears by the letter of the agent, dated 24th June, 1851, and printed in part 3 Annual Message and Accompanying Documents, 1851 and 1852, pages 513, 514, to which your petitioner begs respectfully to refer, and in which the sub-agent asks for advice as to the course pursued by him. The reply to which was a communication from the department, under date of 12th August, 1851, to Adam Johnston, the sub-agent, approving his course, and will be found in exhibit marked A, being an extract from said communication; a perusal of which will satisfy your honorable Court that the sub-Indian agent in this matter exercised a sound discretion, and that he had no reason to doubt but that Congress would make an appropriation to discharge all the liabilities incurred by him with said traders; as without the food thus distributed the Indians must have literally starved, and the object of the United States in extinguishing the Indian right of occupancy to the lands in the neighborhood before mentioned wholly frustrated. Add to which, the sub-Indian agent considered that his duty to his government under his appointment was to protect and feed the Indians over whom the United States claimed the right to have jurisdiction.

Your petitioner further avers that the said Messrs. George G. Belt & Co. furnished the provisions to the sub-agent, Adam Johnston, in good faith, believing that he had full power and authority to make the contract, and that the provisions thus supplied to the United States would be promptly paid for whenever the accounts for the same were duly presented to the proper authorities for that purpose.

That the said George G. Belt & Co. furnished the said Adam Johnston, for distribution among the Indians, provisions, consisting of beef, flour, beans, &c., to the amount of \$9,450 31, on account of which was paid \$1,624 25, leaving a balance due by the United States of \$7,826 06, the particulars of which are annexed, and marked exhibits from 1 to 5, inclusive, being the receipts of Adam Johnston, esq., the sub-Indian agent, for the said supplies.

Your petitioner further states that the prices of the various articles furnished as aforesaid by Belt & Co. were all under the market price at which articles of similar quality were selling to the whites in the very neighborhood where these provisions were distributed; that their distribution was the means of preventing the Indians from robbing and murdering the whites; that the said Belt & Co. had the utmost confidence in the officers sent by the government to treat with the Indians, and never doubted for a moment their right to contract debts for supplies—a confidence in which your petitioner most fully participated.

Your petitioner, therefore, prays that the Solicitor of the United States, appointed to represent the government before this honorable Court, may be required to answer to this petition, and that such proceedings may be had thereon as justice and equity require; and that on the final hearing this Court will grant to your petitioner such relief as his case merits.

CHARLES V. STUART.

City and County of San Francisco, ss:

Charles V. Stuart, of the city of San Francisco, being duly sworn, deposes and says, that he has read the foregoing petition, and that the matters therein stated are true, to the best of his knowledge and belief, and that he is the said assignee of said claim for a full and valuable consideration.

CHARLES V. STUART.

Subscribed and sworn to before me this day, 10th November, 1855.
WM. C. PARKER, *Notary Public.*

[Exhibit No. 1.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of Messrs. Belt & Co. two thousand nine hundred and ten pounds of beef, at twelve and a half cents per pound; six hundred pounds of flour, at fourteen cents per pound; sixty pounds of beans, at twenty cents per pound, and seventy-one pounds of bread, at

twenty cents per pound; delivered to a party of Stanislaus Indians and a party of the Four Creeks Indians whilst on a visit to this reservation, as per verbal orders, from August 5 till September 29, inclusive. The amount being four hundred and sixty-two dollars and eighty-one cents, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 2.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. twelve thousand and one hundred pounds of beef, at fourteen cents per pound, and three thousand four hundred and fifty pounds of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from September 29 to October 24, inclusive. The amount being twenty-two hundred and forty-six dollars, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 3.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. fourteen thousand seven hundred and nine pounds of beef, at fourteen cents per pound, and three thousand four hundred and fifty of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from November 2 to November 30, inclusive. The amount being two thousand six hundred and eleven dollars and twenty-six cents, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 4.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. fifteen thousand three hundred and seven pounds of beef, at fourteen cents per pound, and four thou-

sand two hundred and fifty pounds of flour, at sixteen cents per pound; delivered to the Indians on the Merced and Tuolumne rivers, as per contract, from December 1 to December 31, inclusive. The amount being twenty-eight hundred and twenty-two dollars and ninety-eight cents, which is to be paid out of the first appropriation by the government for such purposes, less sixteen hundred and twenty-four dollars and twenty-five cents, being the amount of two bills of government property sold to Messrs. Belt & Co., and credited upon the account appended to this voucher or receipt, which is hereby reduced to the sum of eleven hundred and ninety-eight dollars and seventy-three cents, to be paid out of said appropriation.

ADAM JOHNSTON,

United States Indian Agent, Valley of San Joaquin.

[Exhibit No. 5.]

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. seven thousand five hundred and nine pounds of beef, at fourteen cents per pound, and sixteen hundred pounds of flour, at sixteen cents per pound; delivered to the Indians upon the Merced and Tuolumne reservations, as per contract, from the 1st to 31st January, inclusive, in the year 1852. The amount being thirteen hundred and seven dollars and twenty-six cents, which is to be paid out of the first appropriation made by the government of the United States for such purposes.

ADAM JOHNSTON,

United States Indian Agent, Valley of San Joaquin.

[Exhibit A.]

Extract of a letter from Charles E. Mix, Acting Commissioner ad interim, addressed to Adam Johnston, Indian sub-agent for Indians, California.

DEPARTMENT OF THE INTERIOR,
Office of Indian Affairs, August 12, 1851.

"SIR: Your letter of 25th June, 1851, giving an account of your proceedings as sub-agent for the Indians in San Joaquin valley for three months preceding that date, has been received.

"The motives which prompted you to furnish additional subsistence to the Indians, and to employ a physician to vaccinate them and prescribe for the diseased among them, are duly appreciated by this office; and as there are no appropriations now applicable for such expenditures the department will recommend the subject to the favorable consideration of Congress, that such action may be had by that body as shall provide for them."

[Exhibit No. 1.]

United States Indian department, per Colonel Adam Johnston, Indian agent, to Messrs. Belt & Co., Dr., for sundries furnished a party of Stanislaus Indians and a party of the Four Creeks Indians while on a visit to this reservation, as per verbal order, and as follows :

August 5, 1851. To beef, per Four Creeks Indians, 1,482 pounds, at 12½ cents	\$185 25
August 5, 1851. To flour, per Four Creeks Indians, 300 pounds, at 14 cents.....	42 00
August 5, 1851. To beans, per Four Creeks Indians, 40 pounds, at 20 cents.....	8 00
August 5, 1851. To bread, per Four Creeks Indians, 41 pounds, at 20 cents.....	8 20
September 29, 1851. To beef, Stanislaus Indians, 1,428 pounds, at 12½ cents	171 36
September 29, 1851. To flour, Stanislaus Indians, 300 pounds, at 14 cents.....	42 00
September 29, 1851. To beans, Stanislaus Indians, 20 pounds, at 20 cents.....	4 00
September 29, 1851. To bread, Stanislaus Indians, 30 pounds, at 20 cents.....	6 00
	<hr/>
	462 81
	<hr/>

MERCEDES RESERVATION,
December 31, 1851.

Received of A. Johnston, United States Indian agent, a receipt, payable on an appropriation being made by the government of the United States for such purposes.

GEORGE G. BELT & CO.

We, Messrs. Belt & Co., the firm within mentioned, hereby assign and transfer the within account and receipt to Charles V. Stuart, of San Francisco, and authorize him to collect and receive the same to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

BELT & CO. [L. s.]

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the foregoing assignment, and acknowledged to me that he executed the same, as one of the firm of Belt & Co., above named, and as the free

and voluntary act and deed of the firm of Belt & Co., therein described, for the uses and purposes therein mentioned.

In witness I have hereunto set my hand and official seal on the day
[L. s.] and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of Messrs. Belt & Co. two thousand nine hundred and ten pounds of beef, at twelve and a half cents per pound; six hundred pounds of flour, at fourteen cents per pound; sixty pounds of beans, at twenty cents per pound, and seventy-one pounds of bread, at twenty cents per pound; delivered to a party of Stanislaus Indians and a party of the Four Creeks Indians whilst on a visit to this reservation, as per verbal order, from August 5 to September 29, inclusive. The amount being four hundred and sixty-two dollars and eighty-one cents, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

We, the firm mentioned in the within receipt and the annexed account, do hereby assign and transfer the said account to Charles V. Stuart, of the city of San Francisco, and authorize him to collect and receive the amount thereof to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

BELT & CO. [L. s.]

STATE OF CALIFORNIA, }
County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the foregoing assignment, and acknowledged to me that he executed the same, as one of the firm of Belt & Co., above named, and as the free and voluntary act and deed of the firm of Belt & Co., therein described.

In witness whereof, I have hereunto set my hand and official seal on
[L. s.] the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

[Exhibit No. 2.]

CHARLES V. STUART *vs.* THE UNITED STATES.—W. HART, Comm'r.

United States Indian department, per Col. Adam Johnston, Indian agent, to George G. Belt & Co., Dr., for beef and flour delivered to the Mercedes and Tuolumne Indians, as per contract and agreement, from the 29th of September to date, at times and in quantities as follows :

1851.		Dr.		
Sept.	29	To Mercedes Indians,	1,960 lbs. beef.	
Oct.	8	-----do-----	1,840----do.	
	16	-----do-----	1,970----do.	
	24	-----do-----	1,930----do.	
			7,700 lbs., at 14 cts.	\$1,078 00
Sept.	29	-----do-----	450 lbs. flour.	
Oct.	8	-----do-----	500----do.	
	16	-----do-----	450----do.	
	24	-----do-----	400----do.	
			1,800 lbs., at 16 cts.	288 00
				\$1,366 00
Sept.	29	To Tuolumne Indians,	960 lbs. beef.	
Oct.	8	-----do-----	1,040----do.	
	16	-----do-----	1,220----do.	
	24	-----do-----	1,180----do.	
			4,400 lbs., at 14 cts.	616 00
Sept.	29	-----do-----	400 lbs. flour.	
Oct.	8	-----do-----	400----do.	
	16	-----do-----	450----do.	
	24	-----do-----	400----do.	
			1,650 lbs., at 16 cts.	264 00
				880 00
				2,246 00

Received of A. Johnston, United States Indian agent, for the above amount, a receipt, payable on an appropriation being made by the government of the United States for such purposes.

GEORGE G. BELT & CO.

We, George G. Belt & Co., the firm mentioned in the within account and receipt, hereby assign and transfer the same to Charles V. Stuart, of the city of San Francisco, and authorize him to collect and receive the same to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

G. G. BELT & CO. [L. s.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person described in and who executed the foregoing assignment, and acknowledged to me that

he executed the same as one of the firm of Belt & Co., and as the free and voluntary act and deed of George G. Belt & Co., therein described, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal
[L. s.] on the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public.

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of Geo. G. Belt & Co., twelve thousand and one hundred pounds of beef, at fourteen cents per pound, and three thousand four hundred and fifty pounds of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from September 29 to October 24, inclusive.

The amount being twenty-two hundred and forty-six dollars, which is to be paid out of the first appropriation by the government for such purposes.

[L. s.]

ADAM JOHNSTON,
U. S. Indian Agent, Valley of San Joaquin.

We, George G. Belt & Co., the firm mentioned in the foregoing account and receipt, hereby assign and transfer the same to Charles V. Stuart, of the city of San Francisco, and authorize him to collect and receive the same to his own use and benefit.

Witness our hands and seals this eighth day of January, A. D. 1855.

GEO. G. BELT & CO. [L. s.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the within assignment, and acknowledged to me that he executed the same freely and voluntarily as the act and deed of George G. Belt & Co., the firm therein mentioned, and for the uses and purposes therein mentioned.

[L. s.] In witness whereof, I have hereunto set my hand and official seal on the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

[Exhibit No. 3.]

STUART vs. THE UNITED STATES.—W. HART, Com'r.

*United States Indian department, per Col. Adam Johnston, Indian agent,
to Belt & Co., Dr.*

For beef and flour furnished the Mercedes and Tuolumne Indians during the month of November, as per contract, at times and in quantities as follows :

1851.	Dr.	
November 2	To beef per Mercedes Indians,	1,950 pounds.
9	-----do-----do-----	1,906 pounds.
16	-----do-----do-----	1,784 pounds.
23	-----do-----do-----	1,847 pounds.
30	-----do-----do-----	1,860 pounds.
		<hr/> 9,347 lbs., at 14 cents---
		\$1,308 58
3	To flour-----do-----	500 pounds.
10	-----do-----do-----	450 pounds.
17	-----do-----do-----	400 pounds.
24	-----do-----do-----	450 pounds.
		<hr/> 1,800 lbs., at 16 cents---
		288 00
5	To beef per Tuolumne Indians,	1,360 pounds.
12	-----do-----do-----	1,402 pounds.
19	-----do-----do-----	1,370 pounds.
26	-----do-----do-----	1,230 pounds.
		<hr/> 5,362 lbs., at 14 cents---
		750 68
5	To flour-----do-----	450 pounds.
12	-----do-----do-----	400 pounds.
19	-----do-----do-----	400 pounds.
26	-----do-----do-----	400 pounds.
		<hr/> 1,650 lbs., at 16 cents---
		264 00
		<hr/> 2,611 26

MERCEDES RESERVATION, *December 1, 1851.*

Received of A. Johnston, United States Indian agent, for the above amount, a receipt, payable on an appropriation being made by the government of the United States for such purposes.

G. G. BELT & CO.

We, Messrs. Belt & Co., the firm named in the foregoing account and receipt, hereby assign and set over the same to Charles V. Stuart, of San Francisco, and authorize him to collect the same to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

BELT & CO. [L. s.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the

within assignment, and acknowledged to me that he executed the same as one of the firm of Belt & Co., above named, and as the free and voluntary act and deed of the firm of Belt & Co., therein described, for the uses and purposes therein mentioned.

[L. s.] In witness whereof, I have hereunto set my hand and official seal in the county and on the day aforesaid.

CHARLES HALSEY,
Notary Public, &c.

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. fourteen thousand seven hundred and nine pounds of beef, at fourteen cents per pound, and three thousand four hundred and fifty of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from November 2 to November 30, inclusive. The amount being two thousand six hundred and eleven dollars and twenty-six cents, which is to be paid out of the first appropriation by the government for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

We, George G. Belt & Co., the firm named in the foregoing account and receipt, hereby assign and transfer the same to Charles V. Stuart, of San Francisco, and authorize him to collect and receive the same to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

GEO. G. BELT & CO. [L. s.]

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the within assignment, and acknowledged to me that he executed the same as one of the firm of Belt & Co., and as the free and voluntary act and deed of George G. Belt & Co., the firm therein described, for the uses and purposes therein mentioned.

[L. s.] In witness whereof, I have hereunto set my hand and official seal on the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

[Exhibit No. 4.]

CHARLES V. STUART *vs.* THE UNITED STATES.—W. HART, Comm'r.

*United States Indian department, per Col. Adam Johnston, Indian agent,
to Messrs. Belt & Co., Dr.*

For beef and flour furnished the Mercedes and Tuolumne Indians during the month of December, as per contract, at times and in quantities as follows :

1851.		Dr.	
December 7	To beef per Mercedes Indians,	2,099	
14	-----do-----do-----	1,990	
21	-----do-----do-----	1,973	
30	-----do-----do-----	1,975	
		8,037 lbs., at 14 cents---	\$1,125 18
1	To flour -----do-----	500	
8	-----do-----do-----	450	
15	-----do-----do-----	450	
22	-----do-----do-----	400	
30	-----do-----do-----	400	
		2,200 lbs, at 16 cents---	352 00
3	To beef per Tuolumne Indians,	1,520	
10	-----do-----do-----	1,470	
17	-----do-----do-----	1,402	
24	-----do-----do-----	1,488	
31	-----do-----do-----	1,390	
		7,270 lbs., at 14 cents---	1,017 80
3	To flour -----do-----	450	
10	-----do-----do-----	400	
17	-----do-----do-----	400	
24	-----do-----do-----	450	
31	-----do-----do-----	350	
		2,050 lbs., at 16 cents---	328 00
			2,822 98
	Mercedes Reservation.—Less bill of property of December 31, 1851.		
	Marks & Stones-----	\$593 00	
	Reynolds and others-----	1,031 25	
			1,624 25
			1,198 73

Received of United States Indian Agent A. Johnson, for the above amount, a receipt, payable on an appropriation being made by the United States government for such purposes.

G. G. BELT & CO.

We, Messrs. Belt & Co., the firm mentioned in the within account and receipt, hereby assign and transfer the same to Charles V. Stuart, of the city of San Francisco, and authorize him to collect and receive the amount thereof to his own use and benefit.

Witness our hands and seals this eighth day of January, A. D. 1855.

G. G. BELT & CO. [L. s.]

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the foregoing assignment, and acknowledged to me that he executed the same as one of the firm of Belt & Co., and as the free and voluntary act and deed of the firm of George G. Belt & Co., therein described, for the uses and purposes therein described.

[L. s.] In witness whereof, I have hereunto set my hand and official seal on the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. fifteen thousand three hundred and seven pounds of beef, at fourteen cents per pound, and four thousand two hundred and fifty pounds of flour, at sixteen cents per pound; delivered to the Indians on the Mercedes and Tuolumne rivers, as per contract, from December 1 to December 31, inclusive.

The amount being twenty-eight hundred and twenty-two dollars and ninety-eight cents, which is to be paid out of the first appropriation by the government for such purpose, less sixteen hundred and twenty-four dollars and twenty-five cents, being the amount of two bills of government property sold to Messrs. Belt & Co. and credited upon the account appended to this voucher or receipt, which is thereby reduced to the sum of eleven hundred and ninety-eight dollars and seventy-three cents, to be paid out of said appropriation.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

We, George G. Belt & Co., within named, hereby assign and transfer the within account and receipt to Charles V. Stuart, of San Francisco, and authorize him to collect and receive the same to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

G. G. BELT & CO. [L. s.]

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the foregoing assignment, and acknowledged to me that he executed the same as one of the firm of Belt & Co., and as the free and voluntary act and deed of the firm of George G. Belt and Co. therein described.

[L. s.] In witness whereof, I have hereunto set my hand and official seal on the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

[Exhibit No. 5.]

CHARLES V. STUART *vs.* THE UNITED STATES.—W. HART, Comm'r.

United States Indian department, per Col. Adam Johnston, Indian agent, to Belt & Co., Dr., for beef and flour furnished the Mercedes and Tuolumne Indians during the month of January, 1852, as per contract, at times and in quantities as follows:

1852.		Dr.			
Jan.	10	To beef for Mercedes Indians, 1,946			
	23	-----do-----do-----	1,763		
				3,709 pounds, at 14 cts.	\$519 26
	10	To flour-----do-----	400		
	23	-----do-----do-----	350		
				750 pounds, at 16 cts.	120 00
	12	To beef for Tuolumne Indians, 1,825			
	27	-----do-----do-----	1,975		
				3,800 pounds, at 14 cts.	532 00
	12	To flour-----do-----	400		
	23	-----do-----do-----	450		
				850 pounds, at 16 cts.	136 00
					1,307 26

MERCEDES RESERVATION,
January 31, 1852.

Received of A. Johnston, United States Indian agent, for the above amount, a receipt, payable on an appropriation being made by the United States government for such purposes.

G. G. BELT & CO.

We, Messrs. Belt & Co., the firm named in the foregoing account and receipt, hereby assign and set over the same to Charles V. Stuart, of the city of San Francisco, and authorize him to collect and receive the same to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

BELT & CO. [L. s.]

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the within assignment, and acknowledged to me that he executed the same as one of the firm of Belt & Co., and as the free and voluntary act and deed of the firm of Belt & Co., therein mentioned, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal [L. s.] on the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

MERCEDES INDIAN RESERVATION,
Valley of San Joaquin, California.

Received of George G. Belt & Co. seven thousand five hundred and nine pounds of beef, at fourteen cents per pound, and sixteen hundred pounds of flour, at sixteen cents per pound; delivered to the Indians upon the Mercedes and Tuolumne reservations, as per contract, from January 1 to January 31, inclusive, in the year 1852.

The amount being thirteen hundred and seven dollars and twenty-six cents, which is to be paid out of the first appropriation made by the government of the United States for such purposes.

ADAM JOHNSTON,
United States Indian Agent, Valley of San Joaquin.

We, George G. Belt & Co., the firm named in the foregoing receipt and account, hereby assign and transfer the same to Charles V. Stuart, of the city of San Francisco, and authorize him to collect and receive the same to his own use and benefit. Witness our hands and seals this eighth day of January, A. D. 1855.

GEO. G. BELT & CO. [L. s.]

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

On this eighth day of January, A. D. 1855, before me, Charles Halsey, a notary public in and for said county, personally appeared William J. Howard, to me known to be the person who executed the within assignment, and acknowledged to me that he executed the same as one of the firm of Belt & Co., and as the free and voluntary act and deed of the firm of George G. Belt & Co., therein described, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and official seal on [L. s.] the day and in the county aforesaid.

CHARLES HALSEY,
Notary Public, &c.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss.

Adam Johnston, of the said city, being duly sworn, deposes and says: That he was acting Indian agent for the United States in the valley of the San Joaquin, in said State, from the month of June, 1850, to the month of —, 1852, and that, according to his knowledge, information, and belief, the several articles charged and specified in the several accounts which are hereto annexed were actually furnished and delivered as specified therein, and at the prices therein set forth, and that there are due therefor the several sums mentioned in the receipts hereto annexed. Deponent further says that, as he is in-

formed and believes, the contract therefor by Messrs. Belt & Co. was fully and entirely fulfilled and performed by them.

ADAM JOHNSON.

Subscribed and sworn to this eighth day of January, A. D. 1855, before me.

[L. S.]

CHARLES HALSEY,
Notary Public, &c.

IN THE UNITED STATES COURT OF CLAIMS.

CHARLES V. STUART, complainant, *vs.* THE UNITED STATES.

I, the undersigned, William Hart, a commissioner duly appointed by the Court of Claims of the United States for the State of California, do hereby certify that, in pursuance of a stipulation, of which a copy is annexed to the deposition of P. T. Smith, in this case, I was duly attended, on the day mentioned in my certificate attached to this deposition, by J. D. Stevenson, esq., on the part of the claimant, and by J. B. Townsend, esq., on the part of the United States, and by Adam Johnston, the witness on the part of the claimant, who deposed as follows :

Question. State your name, age, occupation, and place of residence for the last year ?

Answer. Adam Johnston ; aged forty-six ; lawyer ; and place of residence San Francisco.

Question. State if you have any interest, direct or indirect, in the claim of Charles V. Stuart against the United States for supplies furnished to the Indian department in the State of California ?

Answer. None whatever.

Question. State if you are in any degree related to said claimant ?

Answer. None whatever.

Question. Did you, in the years 1851 and 1852, hold any appointment under the United States government ; and if so, what was that appointment ?

Answer. Yes ; I was Indian sub-agent, first for the State of California, and subsequently for the valley of the San Joaquin.

Question. What were your duties under such appointment ?

Answer. To ascertain the condition of the Indians in California ; their number and condition generally.

Question. During the period above mentioned did you, as United States sub-Indian agent, make any contract with Belt & Co. for the supply of articles of food for the Indians in the valley of San Joaquin ; and if so, did they supply such articles ?

Answer. I did make a contract with Belt & Co. for a certain amount of beef monthly, which they furnished.

Question. Did you contract with them for the supply of any other article of food besides beef ; if so, what ?

Answer. Flour.

Question. State whether the papers now produced, and marked,

respectively, from 1 to 5, contain the account of the articles delivered by Belt & Co., by your orders, under the above contract?

Answer. They do.

Question. Are the receipts respectively attached to each account your receipts for the articles so furnished by Belt & Co.?

Answer. They are.

Question. State whether the prices charged by Belt & Co. in said accounts were the contract prices, and whether they were fair and reasonable at the time of the delivery thereof?

Answer. They were the contract prices, and I thought them at the time fair and reasonable.

Question. What was done with the articles so furnished by Belt & Co.

Answer. They were distributed among the Merced and Tuolumne river Indians.

Cross-examined by J. B. Townsend, esq., on the part of the United States.

Question. What amount of beef and flour did you contract with Belt & Co. to supply monthly?

Answer. No particular amount monthly; that would depend upon the number of Indians on the Merced and Tuolumne; at times there were a great many more than at others, and consequently had to supply more.

Question. Was your contract with Belt & Co. then to furnish the Indians of the Merced and Tuolumne rivers with beef and flour whenever they should ask for or demand it?

Answer. No, sir; it was regulated by my own idea of their necessities, and at the end of every month I gave receipts accordingly.

Question. Who made the manual delivery of beef and flour to the Indians?

Answer. Mr. Belt, generally; when he did not, some one of his partners, or some one in his employ.

Question. Were you present at the delivery of all or any of the articles charged in these accounts?

Answer. I was present when I could be; it sometimes happened that I was necessarily absent in other parts of the valley.

Question. Were you present when the articles charged in bill No. 1 were delivered to the Four Creek and Stanislaus Indians?

Answer. I was.

Question. Did you direct the quantity of articles charged in that bill to be delivered to them, respectively, or did you leave Messrs. Belt & Co. to deliver what quantity they saw fit, or the Indians might apply for?

Answer. We settled upon the amount between us, that is, Belt & Co. and myself, required for the number of Indians present on the occasion.

Question. Was this settlement before or after the articles were delivered, that is, settlement on the amount to be furnished?

Answer. I am under the impression it was before or during the time they were delivered, they were irregular in coming in.

Question. Were you personally present when the articles charged in bill No. 2 were delivered to the Merced and Tuolumne river Indians?

Answer. I was, but do not remember how long.

Question. Had Messrs. Belt and Co. authority from you to deliver to the Indians beef and flour when they should call for it in your absence?

Answer. No; not when the Indians should call for it. I was frequently obliged to confide in their delivering beef and flour to the Indians during my absence in the proper quantities.

Question. Who regulated the quantities?

Answer. I mostly regulated the quantities to be delivered.

Question. Who regulated the quantities when you did not?

Answer. Mr. Belt, if any change was made in the quantities in my absence.

Question. Did Mr. Belt regulate the quantities delivered in your absence.

Answer. I don't know of any change having been made in the quantities in my absence. If any quantities greater or smaller were delivered during my absence, it was on his judgment.

Question. Was the quantity delivered regulated by Mr. Belt's judgment in your absence.

Answer. It may have been; I suppose it was.

Question. What quantity per head did you deliver when present to each Indian?

Answer. I do not recollect how that was regulated.

Question. Was there any particular rule on the subject as to the quantity delivered to each?

Answer. I think not; sometimes it happened that they gathered grass seeds and such things as they subsist upon, and it was not necessary to give them as much at one time as another.

Question. Was the distribution made to all who might require provisions indiscriminately, or to any ones in particular?

Answer. At first provisions were delivered to the captains or chiefs of families. but I subsequently changed the mode of delivery so that all were supplied.

Question. Were all supplied who applied for provisions, and when they applied?

Answer. Not at all. There were certain days of delivery; occasionally Indians from the mountains, or wild Indians, would visit the Indian reservation, and on such occasions I generally furnished them with the requested food.

Question. Were there any fixed times of distribution, or days of distribution?

Answer. We had fixed days, and generally regulated from one delivery to another.

Question. What were those fixed days?

Answer. Sometimes one day of the week, and sometimes another.

Question. What governed the fixing of these days?

Answer. The necessities of the Indians, as I conceive.

Question. How often was this distribution made, per day, per week, or per month?

Answer. Sometimes two or three days would intervene between the deliveries, and sometimes more.

Question. Who regulated the days of delivery in your absence?

Answer. Mr. Belt, but I was generally there about the days of delivery.

Question. Was it the intention, in furnishing these provisions, to supply the Indians generally of the Merced and Tuolumne rivers with food to the extent that they needed it?

Answer. It was the intention to supply their deficiency of food.

Question. What number of Indians were there on the Merced and Tuolumne rivers and within your jurisdiction at that time?

Answer. On the Merced and Tuolumne rivers, I think, there were 950 permanent, and they were visited by strange Indians from the mountains to a considerable number, they were wild Indians and came down frequently; in my jurisdiction there was in the neighborhood of *five thousand*.

Question. Were the distributions confined to the Indians of the Merced and Tuolumne rivers, or made to any Indians requiring it within your jurisdiction?

Answer. The places of distribution were on the Merced and Tuolumne rivers, and distributed to other Indians who came there as well as those who resided there, and also distributed to the wild Indians who came from the mountains.

Question. Are the prices of provisions charged on these bills exhibited greater or less than those at which the same articles were furnished to white persons at that time?

Answer. I think the prices were about the same.

Question. Were the prices of the articles agreed upon previously to their being furnished or subsequently?

Answer. Previous to their being furnished.

Question. Were you present when the articles charged on bill No. 3 were furnished?

Answer. I presume I was present at the delivery of most of the articles. I am not positive of being present at the delivery of the whole.

Question. Are you positive of being personally present at the delivery of any of the articles charged on that bill?

Answer. I am not positive of any particular item.

Question. Are you positive of being personally present at the delivery of any of the articles charged on bill No. 4?

Answer. I am positive I was present at the delivery of a portion of the articles on this bill, but what items I cannot certify; the same remarks will apply to bill No. 5.

Question. Have you any means of knowing that the articles charged in these bills, Nos. 1, 2, 3, 4, and 5, as having been delivered, but which you say were not delivered in your presence, were, in fact, delivered, except the statements of Messrs. Belt & Co. to you, and their accounts made out for said articles?

Answer. I always heard of their being delivered, on my return, by others, who were in the employ of Belt or residing there.

Question. Have you any other means of such knowledge besides what you have now stated?

Answer. I believe not. I was always satisfied when signing the receipts, from some cause or other that such had been the case.

Question. What amount in all was furnished under contracts with you as Indian sub-agent, whilst you were such agent, with Belt & Co. and all others with whom you made such contracts?

Answer. I am unable to say from memory the amount?

Question. Was it as much as \$100,000?

Answer. I think not.

Question. Was it as much as \$50,000?

Answer. I am unable to say positively whether it was or not.

Question. To the best of your knowledge and belief was it as much as \$50,000?

Answer. About that, I should judge.

Re-examination.

Question. Do you know the signatures attached to each of the receipts on each of the bills produced?

Answer. I think I do. To bill No 1, the signature is in the handwriting of George G. Belt, of the firm of Belt & Co. ; to bill No. 2, the same answer ; to bill No. 3, the same answer ; to bill No. 4, the same answer ; the same to No. 5.

Question. Do you know the signature to the assignment on each bill ; and if so, whose is it?

Answer. All of them are in the handwriting of William J. Howard, one of the firm of Belt & Co.

Question. Did Mr. George G. Belt hold any appointment under the government during the time the provisions were distributed as charged in the bills ; and if so, what?

Answer. Early in 1851 I recommended him as a suitable person to trade with the Indians, and I was authorized by the department, on his executing the usual bonds, to appoint him, which I did.

Cross-examination resumed.

Question. Did you appoint Mr. Belt to trade with the Indians previous to any express authority from the department?

Answer. I don't think I appointed him. I could not without authority from the department.

Question. Had he given the bond as Indian trader, which you have spoken of, previous to the distribution of the goods charged in his bill?

Answer. I don't remember the date of the bond exactly, but I presume it was about the commencement of the delivery of those articles.

Question. Do you know of any other matter relative to the claim in question ; if yea, please to state it?

Answer. Nothing.

ADAM JOHNSTON.

STATE OF CALIFORNIA, }
County of San Francisco, } ss.

On this 29th day of May, A. D. 1856, personally came Adam Johnston, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Adam Johnston, taken at the request of the claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Charles V. Stuart.

The counsel of the United States was notified, did attend, did not object, and cross-examined the witness.

W. HART, *Commissioner*. [SEAL.]

DISTRICT OF COLUMBIA, }
Washington County, } ss.

On this 26th day of June, A. D. 1856, personally came Oliver M. Wozencraft, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of Oliver M. Wozencraft, taken at the request of Charles V. Stuart, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Charles V. Stuart *vs.* The United States:

General interrogatory by the commissioner. State your name, occupation, age, place of residence for the past year, whether you have any interest, direct or indirect, in the claim which is the subject of inquiry, and whether you are in any degree related to the claimant.

Answer. My name is Oliver M. Wozencraft; a physician; aged about forty-three years; and have resided in San Francisco, California, for the past year. I have no interest, direct or indirect, in the claim, and am not related to the claimant.

1st interrogatory. Were you in the employment of the government in California in the years 1851 and 1852? If yea, state the same, and also your instructions, if you had any.

Answer. I was in the employment of the government in California in 1851 and 1852, as a commissioner and Indian agent to make treaties with the Indians and to take charge of them. I had written instructions, which will be found in Senate Executive Document No. 4, March 17, 1853, special session.

2d interrogatory. Do you know one Adam Johnston? If yea, state what employment he was in, where, and under whose supervision.

Answer. I know Adam Johnston; he was in the employment of the government as a sub-Indian agent, acting in the San Joaquin valley, California.

3d interrogatory. Do you know anything of a contract made between the said Johnston and George G. Belt & Co., for the supply of beef and other provisions to the Indians of San Joaquin valley and Toulumne and Merced rivers? If yea, state the same, and say whether there was any exigency which made such contract necessary and proper.

Answer. I never saw the contract, but I know the fact that Belt & Co. were furnishing supplies to the Indians under Adam Johnston's supervision. There was a portion of the Indians with whom treaties were made, and who were moved into a reservation, and it was necessary to furnish them with supplies to prevent starvation.

4th interrogatory. If you know who compose the firm of George Belt & Co., state the same, and what was their employment in the Indian nation, and what was their character for honesty and probity?

Answer. I knew Mr. Belt intimately, and understood that William and George Howard were his partners at the time, but I do not know the fact. Belt was a trader, and always bore a good character for honesty.

5th interrogatory. If you know anything else to benefit the petitioner, state the same as though particularly interrogated.

Answer. I know nothing else.

O. M. WOZENCRAFT.

Cross-interrogatories on the part of the government.

1st cross-interrogatory. By what authority was the contract entered into?

Answer. I do not know.

2d cross-interrogatory. What other similar contracts were made by you and other commissioners? What amount is involved in those contracts?

Answer. I did not make the contract referred to, and therefore cannot further answer the question.

3d cross-interrogatory. Have not those contracts been uniformly rejected by the department, and did not the commissioners, in any case, deceive the contractors by leading them to suppose *that they have any such contracts*?

Answer. Contracts made by me, as commissioner for the supply of the Indians, have been rejected by the department. I am not aware that any deception was practiced on the contractors.

General interrogatory by the commissioner. Do you know of any other matter relative to the claim in question? If so, state it.

Answer. I do not.

O. M. WOZENCRAFT.

The adverse party did not attend.

A. AUSTIN SMITH,
Commissioner.

Commissioner's fees, \$6 30.

*Supplies to Indian agents.*CHARLES V. STUART *vs.* THE UNITED STATE.MARTIN B. LEWIS *vs.* THE UNITED STATES.

In these cases, in which testimony has been ordered, it is agreed that William Hart, esq., commissioner, should examine any witnesses that may be produced before him under the same conditions as are contained in the agreement to take testimony in the cases of Williams, Pacheco, Thompson, and Briones.

P. PHILLIPS,
Solicitor for Claimant.

M. BLAIR,
Solicitor for the United States.

WASHINGTON, *March 18, 1856.*

IN THE UNITED STATES COURT OF CLAIMS.

CHARLES V. STUART, complainant, *vs.* THE UNITED STATES.

I, the undersigned, William Hart, a commissioner duly appointed by the Court of Claims of the United States for the State of California, do hereby certify that, in pursuance of a stipulation, of which a copy is hereunto annexed, I was duly attended, on the day mentioned in my certificate attached to this deposition, by J. D. Stevenson, esq., on the part of the claimant, and by J. B. Townsend, esq., on the part of the United States, and by P. T. Smith, the witness on the part of the claimant, who deposed as follows :

Question. State your name, age, occupation, and place of residence for the last year.

Answer. P. T. Smith, aged 32 years, occupation, carpenter ; residence for the last year, Mission Dolores, San Francisco.

Question. State if you have any interest, direct or indirect, in the claim of Charles V. Stuart against the United States for supplies furnished to the Indian department in the State of California?

Answer. None whatever.

Question. State if you are in any degree related to said claimant?

Answer. Not at all.

Question. In what employ were you in the years 1851 and 1852?

Answer. I was in the employ of George G. Belt & Co., on the Merced river, from June, 1851, to January, 1852.

Question. During that period do you know of any beef and flour being delivered to the Indians ; if so, where and by whom?

Answer. Yes ; beef and flour was delivered to the Indians on the Merced River Indian reservation. Beef was also sent over to the Tuolumne Indians.

Question. Who had charge of the Indians at that reservation?

Answer. Colonel Johnston, the sub-Indian agent.

Question. How often was beef and flour distributed to the Indians on the Merced and Tuolumne rivers, and in what quantities?

Answer. The beef was killed two or three times a week; there was killed sometimes one, sometimes three, but mostly three at each killing. I have seen bags of flour delivered to the Indians, but not much; I was not where I could see it. The beef was killed in a corral near where I was working, and I assisted frequently at the killing. I knew of a feast there was on the Merced of several bags of flour having been given to the Indians in sacks, I think, of 200 pounds each; this feast was, I think, in December, 1851.

Question. Did you see anything besides flour distributed to the Indians at that feast?

Answer. Yes, beef. During that large feast they must have killed four times that week, and must have killed that week about nine beasts, all of which was distributed except a quarter of one beef used in the house.

Question. What was the weight of the beasts, generally?

Answer. About four to five hundred, and might be, some of them, six hundred; the average was about five hundred; but I am not much of a judge of the weight of beef.

Question. Who was present at and delivered the beef to the Indians or superintended the delivery?

Answer. George G. Belt was the director, and colonel was around there at the delivery.

Cross-examined.

Question. Were you at Belt's store, on the Merced, during the whole of the time from June to January.

Answer. With the exception of a visit of a few days to Stockton on business, I was there all the time.

Question. Was the largest amount of beef distributed at the great feast which you have mentioned the largest quantity that you know to have been distributed while you were with Belt & Co?

Answer. It was the largest distribution in the same length of time.

Question. How long did that feast last?

Answer. About a week.

Question. Were there some weeks during the time that you were with Belt & Co. when there was no beef distributed to the Indians?

Answer. I think there was some little delivered every week; some weeks there was not much.

Question. Do you recollect any other great feast whilst you were there besides the one you have mentioned?

Answer. There was a big feast in June, soon after I went there; I think not so large as the others; there were one or two others, but not as large as those I have mentioned.

Question. Do you know of any other matter relative to the claim in question; if yea, state it?

Answer. I do not know of anything.

P. T. SMITH.

STATE OF CALIFORNIA, }
 County of San Francisco, } ss.

On this 13th day of June, A. D. 1856, personally came P. T. Smith, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness, and the answers thereto were written down by the commissioner in presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of P. T. Smith, taken at the request of the claimant, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Charles V. Stuart.

The counsel for the United States was notified, did attend, did not object, and cross-examined the witness.

WM. HART, [L. s.]
 Commissioner.

No. 3.

California was acquired by treaty on February 2, 1858, and admitted into the Union on September 9, 1850.

Gold had been discovered, and the rush of population to that region was such as the world had never seen before.

The government had thus assumed the protection of two races, the white man, citizens of the country, and the Indian tribes held in a state of pupilage.

On the 30th of September, 1850, they took the initiatory step of preserving peace, by appropriating \$25,000 "to enable the President to hold treaties with the Indian tribes in the State of California."

The \$25,000 was no limitation upon the power thus conferred; \$25,000 more for defraying expenses of holding treaties.

On the 30th of August, 1852, \$100,000 for the preservation of peace with the Indians who had been dispossessed of their lands, until permanent arrangement could be made for them.

On the 3d of March, 1855, \$125,000 for feeding and removing the Indians; \$25,000 for feeding those outside of the reservations; \$54,000 additional for physicians, &c.

INSTRUCTIONS.

Commissioner Indian Affairs to McK., B. & W., Commissioners, October 15, 1850, Doc. 4, p. 8.

"The object of the government is to make such treaties and compacts with them as may be just and proper." They were required to adopt such action "as would be most efficient in attaining the desired object, which is by all possible means to conciliate the good feelings of the Indians, and to get them to ratify those feelings by entering into written treaties binding on them towards the government and towards each other."

Same to Same, April 12, 1851, Doc. 4. p. 14.

Informing them of the act, that all treaties were to be made by such agents as the President might designate, and designating them as agents to negotiate treaties "under the instructions heretofore given you as commissioner?"

Same to Same, May 9, 1851, Doc. 4, p. 15.

"What particular negotiations may be required it is impossible for this office to foresee, nor can it give any specific directions on the subject. Much must be left to the discretion of those to whom the business is immediately intrusted."

On the 22d and 24th of May, 1851, Doc. 4, p. 15 and 16, the Commissioner acknowledges the receipt of several treaties. "The department fully appreciates the difficulties with which you had to contend in executing the important trust confided to you."

Commissioner of Indian Affairs to McKee, June 25, 1851, Doc. p. 4, 17.

"In the copies of treaties heretofore transmitted there are provisions for delivering to them sundry articles in 1851, which cannot be complied with, as Congress will not be in session in time to make the necessary appropriations. Should you conclude other treaties you will fix the time of payment under any stipulations at a period sufficiently in the future to allow of congressional action to meet the requisition."

On June 27, 1851, Same to Same, Doc. 4, pp. 17, 18.

"You will perceive that though \$75,000 was estimated and asked for the service in which you are engaged, Congress appropriated only \$25,000, the amount remitted on the 25th, which, with the \$25,000, heretofore placed in your hands, is all that is applicable to the negotiation of treaties in California, and when the funds referred to have been exhausted you will close negotiations, &c., as the department could not feel itself justified in authorizing anticipated expenditures beyond the amount of the appropriations made by Congress."

Thus a general authority was given without any special instructions, and the power conferred included all the proper means for executing the object.

The rule of law is thus stated: "When there is a special authority to do a particular act, or a general authority to do all acts in a particular business, each case includes the usual and appropriate means to accomplish the end."—(2 Kent's Com., 790.)

In the letter of appointment April 14, 1849, Doc. 4, p. 3, Johnson is directed:

"In making presents to Indians you will be as economical as possible, and confine yourself to such cases only as will effect some important object."

In the letter of appointment of the commissioners, October 15, 1850, they are informed that "Mr. Johnston will be directed to afford you all the aid in his power."

The 7th sec. act 30th June, 1834: "It shall be the general duty of Indian agents and sub-agents to manage and superintend the intercourse with the Indians within their respective agencies, agreeably to law, and to carry into effect such regulations as may be prescribed by the President."

By the 17th section the President is to prescribe rules and regulations to effect the provisions of that or any other act relating to Indian affairs and for the settlement of the accounts of the Indian department. By the act 9th July, 1832, the President to appoint a commissioner, who shall, under the direction of the Secretary of War, and agreeably to such regulations as the President may from time to time prescribe, have the direction and management of all Indian affairs and of all matters arising out of Indian relations.

By the 5th rule, adopted June 1, 1837—General duties of agents and sub-agents:

5. To superintend and manage the intercourse of their respective tribes with other tribes and with citizens of the United States.

In the 5th of the Revised Regulations, November 11, 1836:

"All claims and accounts for expenditure will be rigidly examined; and when authorized by law or by the regulations and instructions, *or when in the exercise of a sound discretion* the Commissioner is of opinion the expenditure *is just and proper*, they will receive his sanction, and then be passed to the Second Auditor for settlement."

Adam Johnston to Commissioner of Indian Affairs, June 24, 1851, (Doc. 2, 511,) states his proceedings for the last three months:

"Should this or any other proceedings of mine not meet the approbation of the department, I hope to be informed immediately."

Commissioner to Johnston, August 12, 1851, (Doc. 4, 21,) approving the "additional subsistence" supplied, and stating that application would be made to Congress for appropriations to provide for them.

Johnston to Commissioner of Indian Affairs, October 8, 1851, (Doc 4, 195:)

"In all cases where my duties were not clear, I have always expressed in the document, 'the government concurring therein.'"—(Johnston to Commissioner, December 4, 1851, Doc. 4, 234.)

Commissioners McK., B. and W. to Commissioner of Indian Affairs, May 15, 1851, (Doc. No. 2, 486:)

"We have found by experience that the best way to keep the Indians quiet and peaceable is to give them plenty of food."

"For present pressing demands we have to do the best we can, fully satisfied that our policy is correct, and that it is in the end cheaper to feed the whole flock for a year than to fight them for a week."

Wozencraft to Commissioner of Indian Affairs, July 12, 1851, (Doc. No. 2, 488:)

"In order to effect this (treaty) I have sent men among them who speak their language and are influential, and placed beef cattle under the care of the traders, in order to supply their pressing necessities for food, in order to induce them to come down from out their mountain fastnesses."

Barbour to Commissioner of Indian Affairs, July 28, 1851, (Doc. No. 2, 496:)

"The Indians in the San Joaquin and Tulare valleys, who a few months since were at open war with the whites, are now entirely peaceable and quiet," &c.

McKee to Commissioner of Indian Affairs, October 4, 1851, (Doc. No. 4, 193:)

"Since the receipt of your letter of May 22, expressing your approval of our general course in treating with the '*sui generis*' tribes in California, I have felt relieved, and anxious to complete the work intrusted to me," &c.

It is thus seen that the government was kept fully advised of the proceedings of the commissioners and agents. Their acts were never repudiated; on the contrary, they were approbated. When payment was refused by the department, it was only on the ground of the want of means.

By means of the treaties thus entered into, the peace of the country was preserved. These treaties were all rejected by the Senate. The reason of this rejection has not yet transpired, but it is easy to form an opinion of the cause. The Indians had all been collected on their reservations; the whites had surrounded them in such force that war was no longer to be apprehended, and peace was as well secured without as with the treaties. Congress therefore freed itself from the treaty responsibilities, but is bound by this very rejection by a stronger faith to pay for the means by which this was accomplished.

The power conferred on the President was to *hold* treaties. The character of the party was considered, and it was known that provisions had to be furnished to the tribes assembled for the purpose, and that present payments had to be made.

There are numerous precedents of Indian treaties wherein a part of the consideration inducing the treaty was actually paid and delivered at the time of signing the treaty, whilst other stipulations therein were postponed and suspended in force and effect until ratified by the President and Senate. Among such are:

The treaty with the Six Nations in 1794, preamble and article 6.—(Stat. at Large, Indian treaties, vol. 7, pp. 44, 46.)

Treaty in 1795 with the Wyandots, Delawares, and other tribes, preamble and article 4.—(Same vol., pp. 49, 51.)

Treaty with the Cherokees in 1798, preamble and article 6.—(Same vol., pp. 62, 63.)

Treaty with the Choctaws in 1801, preamble and article 5.—(Same vol., pp. 65, 67.)

Treaty with the Delaware tribe in 1804, preamble and article 2.—(Same vol., p. 81.)

Treaty with the Fox Indians in 1804, preamble and article 2.—(Same vol., pp. 84, 85.)

Treaty with the Cherokees in 1805, articles 3 and 5.—(Same vol., pp. 93, 94.)

Treaty with the Osages in 1808, article 5, par. 2, and article 13.—(Same vol., pp. 108, 110.)

Treaty with the Creeks in 1814, article 7.—(Same vol., pp. 120, 122.)

Treaty with the Ottoways, and others, in 1816, article 2.—(Same vol., p. 147.)

Treaty with Quapaws in 1818, articles 5 and 7.—(Same vol., pp. 177, 178.)

Treaty with Kickapoos in 1819, article 6.—(Same vol., p. 201.)

Treaty with the Sacs and Foxes in 1832, articles 10 and 12.—(Same vol., pp. 375, 376.)

Treaty with the Apalachicola band in 1832, article 2.—(Same vol., p. 377.)

Treaty with the Ki-o-wa, Ka-ta-ka and Ta-wa-ka-ro nations in 1837, articles 8 and 10.—(Same vol., p. 535.)

Such precedents, and the known habits and expectations of the savage tribes to have *something* paid them *immediately* at the making of a treaty, in provisions, merchandise, or money, and before the treaty could be submitted to the Senate, gave rise to the law of May 6, 1822, (3 Stat. at Large, p. 683, chap. 58, sec. 3,) which has been substituted by that of June 30, 1834, (vol. 4, p. 737, chap. 162, sec. 13.)

So the treaties were made by the commissioners lawfully appointed and authorized in that behalf.

CHARLES V. STUART, assignee of GEORGE G. BELT & Co.

The claim is by the assignee of Belt & Co., Charles V. Stuart, for supplies of food furnished to Indians on the order of the Indian sub-agent Johnston.

The first question as to right of assignee to bring the petition in his own name.

The act of February 26, 1853, was, as its caption shows, *to prevent frauds upon the treasury of the United States*, not to prevent the assignment of claims generally. There could exist no motive for this. The old doctrine against maintenance, which was the foundation of the rule against the assignment of choses in action, now has but a nominal existence, and influences the mere technical question as to the party on the record.

But the body of the act shows it has but a specific not a general application. It makes absolutely null and void all transfers and assignments of claims against the United States, unless made after "*the allowance of the claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.*"

This was evidently intended to protect the officers of government who had not the necessary means of investigating the due execution of the assignment; and would not apply to a case in court, where the allegation was to be proved according to the rules of law.

The act organizing the Court requires the claimant to set forth in his petition a statement of his claim, "who are the owners thereof,

or interested therein, and *when*, and upon what consideration such person became so interested." This refers to the very case of assignment, and the rules of the court enforce this provision.

By the act July 29, 1846, it was provided "that claims allowed shall not be paid to any one as attorney, unless the warrant of attorney should be executed *after the enactment of the act or resolution allowing the claim*," and a mode of executing and authenticating the warrant of attorney is provided.

The act of 1853 alters this by requiring the warrant to be not only after the enactment, but also after the ascertainment of the amount due, and the issuing of a warrant for the payment thereof.

Now it is very evident that neither of these acts apply to cases before this Court, because the judgment of the Court will not only decide upon the amount due, but *as to the parties to whom* it is due, and the bill reported will ascertain those facts specifically; and no power of attorney will be necessary except a third person should be intervened after the passage of the bill.

The government has the entire control of the Indian tribes. They are subject races, recognized as having no sovereign right except the right to cede their lands to the United States.

They are treated as in a state of *pupilage* to the United States.—(*Cherokee vs. State of Georgia*, 5 Pet., 1.)

They are not permitted intercourse with the whites except by permission of the government.—(See intercourse act June 30, 1834, vol. 4, 732.)

The government is bound to see that they do not perish from starvation, and are bound for provisions supplied in the particular emergency of this case, upon the same principles as a father is bound for necessities furnished to a minor child.

So exclusive and full is this obligation that the government now holds itself responsible for depredations committed by the Indians.—(See 17 sec. act of 1834.)

The duties of Indian agents is prescribed in the 7th section of the act for the organization of the Indian department, vol 4, 736. To manage and superintend the intercourse with the Indians, &c. The words, manage and superintend, have an enlarged signification, and means the power to keep the peace in the relation of the whites to the Indians, and among the Indians themselves.

As these supplies were furnished with the approbation of the department, it is not necessary to confine ourselves to the precise limit of the authority of an Indian agent. The executive branch of the government through the appropriate department recognizes it.

The position is this: That the executive branch of the government was authorized to furnish these supplies, and that the ratification of the act is as good as an original authority to the agent to furnish them.

By the 13th section of the act for the organization of the department, it is provided "that all merchandise required by treaty, payable after the making of the treaty, shall be purchased under the direction of the Secretary of War, upon proposals to be received on notice previously given; and all merchandise required at the making of any treaty shall be purchased by commission; and all other purchases on

account of the Indian department shall be made by such persons as the President shall designate for that purpose.

This provision establishes these propositions: *First.* That it may be the duty of the government to furnish the Indians with provisions, *though not required to do so by any treaty stipulations.*

Second. When this extraordinary case arose, the President alone was fully authorized to fulfill this obligation through an agent to be designated by him.

Third. The amount of these provisions, and the necessity which justified his interposition, was left entirely to his discretion.

From this it follows that, as he had the right to furnish the provisions through his agent, he is fully authorized to recognize the act, though done without previous authority.

If a man has authority through an agent to execute a deed, a deed made by his agent without authority, but subsequently approved, is good.

It has been frequently decided that the executive departments speak the voice of the executive himself.

For the evidence of this ratification see Senate document, special session, 1853, No. 4; letters of Johnston, Indian agent, pp. 104 105; letters of Interior Department, p. 21.

These letters show the history of the transaction.

For the views of Congress see report on Colonel Frémont's case.—(Rep. No. 289, 33d Congress, 1st session.)

Again, if these supplies were furnished to carry out an *obligation* of the government, though without previous authority, and the government recognizes the good faith in which the act was done, and the value of the thing supplied, then there is such an *obligation* on the part of the government as would raise an implied assumpsit, over which the Court will possess jurisdiction.

It will be remembered that the necessity of the act, and its bona fides were admitted by the solicitor in the argument.

P. PHILLIPS,
Solicitor for petitioner.

FEBRUARY 7, 1856.

IN THE COURT OF CLAIMS.—NO. 459.

CHARLES V. STUART *vs.* THE UNITED STATES.

Brief of the United States Solicitor.

Besides the testimony taken in this case, and yet unprinted, the following public documents of Congress will be referred to, viz:

Document 1, Senate, second session thirty-first Congress, annual report of the Secretary of the Interior.

Document 61, Senate, first session thirty-second Congress, debts contracted by Indian agents, &c.

Document 4, Senate, special session, 1853, correspondence with Indian agents.

Which will be hereafter briefly designated as documents 1, 61, 4. On or before the 14th of October, 1849, Adam Johnston was appointed sub-Indian agent on the Sacramento and San Joaquin rivers, in California, to include the Indians at or in the vicinity of those places, and any others to be subsequently designated by the Indian department.—(Com. Ind. Aff. to Johnston, Oct. 14, 1849, Doc. 4, p. 2.) This sub-agency was subsequently restricted to the Indians "in the valley of San Joaquin."—(Com. Ind. Aff. to Johnston, Nov. 24, 1849, Doc. 4, p. 5 ; also pp. 4, 6.)

It seems this appointment was made under the 5th section of the act organizing the department of Indian Affairs, approved June 30, 1834.—(4 Stat., 735.)

By act of September 28, 1850, (9 Stat., 519,) the President was authorized to appoint three Indian agents for California, and by an act approved September 30, 1850, (9 Stat., 558,) an appropriation of \$25,000 was made, "to enable the President to hold treaties with the various Indian tribes in the State of California."

George W. Barbour, Redick McKee, and O. M. Wozencraft, were appointed agents under the act of September 28, 1850, but it being soon discovered that no appropriation had been made for their salaries, their functions and salaries as Indian agents for California were suspended ; and they were appointed, under act of September 30, commissioners to treat with the Indians.—(Doc. 1, p. 29.) The instructions to them, dated October 15, 1850, as commissioners, are printed in Doc. 4, p. 8. The appropriation of \$25,000 was then remitted them.

By an act approved February 27, 1851, section 3, (9 Stat., 586,) it was enacted, that "hereafter all treaties with Indian tribes shall be negotiated by such officers and agents of the Indian department as the President of the United States may designate for that purpose." The provisions of this act were communicated to the commissioners by the Commissioner of Indian Affairs, in a letter dated April 12, 1851, (Doc. 4, p. 14,) whereby they were informed that their offices and functions as commissioners were abrogated and annulled ; they were, however, directed not to suspend negotiations, but to enter upon their appointments as agents, and were, *as such*, designated (under the act of 1851) to negotiate with the Indians of California, under the instructions already given.

This letter was received by the commissioners in San Francisco, early in June, 1851.—(Doc. 4, p. 130.)

By act of March 3, 1851, (9 Stat., 572,) a further appropriation of \$25,000 was made for expenses of treating with Indians in California, which was remitted to them by the Commissioner of Indian Affairs, June 25, 1851.—(Doc. 4, p. 17.)

On the 27th of June, 1851, (Doc. 4, p. 17,) the Commissioner of Indian Affairs wrote to the commissioners, that the two appropriations of \$25,000 each constituted all the money applicable to the negotiation of treaties in California ; and he said, "when the funds referred to have been exhausted, you will close negotiations and proceed with the discharge of your duties as agents simply, as the department could not feel itself justified in authorizing anticipated expenditures

beyond the amount of the appropriation made by Congress." This letter reached McKee September 14, near Humboldt river, (p. 186,) Barbour at San Francisco, in September, (p. 260,) and Wozencraft on the Sacramento river, September 2.—(p. 180.)

The commissioners arrived at San Francisco between the 27th of December, 1850, and January 8, 1851, (Doc. 4, p. 53,) and soon after started southward up the valley of the San Joaquin, meeting and treating with the Indian tribes of the valley.—(Doc. 4, pp. 54 to 76.) Arrived near the head of the valley, at Camp Barbour, May 1, (Doc. 4, p. 76,) they concluded to separate and act individually in their several districts, which had been determined by lot. Barbour took the southern district, Wozencraft the middle district, and McKee the northern district.

This division was communicated to the Commissioner of Indian Affairs, by letters of May 1 and 13, 1851, (Doc. 4, p. 77,) and approved by him June 27, 1851.—(Doc. 4, p. 17.)

Charles V. Stuart claims, as assignee of George Belt & Co., for several bills of provisions (beef, flour, beans, &c.) furnished the Indians of the reservation on the Mercedes and Tuolumne rivers, for which he was trader, to the amount of \$7,826 06, by order of A. Johnston, from August 5, 1851, to January 31, 1852.

At this period Wozencraft was in charge of this agency; Johnston was only a sub-agent. The latter, indeed, appears to have considered himself as in charge of the reservations in the valley of the San Joaquin.—(See Doc. 4, p. 241.)

Johnson had received from the commissioners, August 28, 1851, (Doc. 4, p. 268,) 1,900 head of cattle for these and other Indians; this supply was deemed sufficient to last until May, 1852.—(See Doc. 4, p. 259.)

George Belt was an Indian trader, having the exclusive right to trade with the Indians on the reservation where he was settled.

The Indians on the reservation for which he was licensed were working and mining for him and other whites; and the traders paid large sums for licenses, and realized great profits from their trade with the Indians.—(Doc. 4, pp. 107, 207, 246.) It is contrary to public policy, if not in violation of statute, (act of June 30, 1834, sec. 14, 4 Stat., 738,) for any such trader to act as an agent of the United States, as Belt appears to have done.

The solicitor contends that the contract with Belt & Co. is void, being made contrary to the act of May 1, 1820, (sec. 6, 3 Stat., 568,) which prohibits any contracts, except such as are made under a law authorizing the same, or where there are appropriations adequate to their fulfillment.

And again: being made contrary to the provisions of the act of June 30, 1834, (sec. 13, 4 Stat., 757,) which prescribes the mode of purchasing goods for Indians.

And again: if these acts should not be held to apply, objection is further made for non-conformity to the act of March 3, 1809, (2 Stat., 536,) as construed by Attorney General Berrien, August 29, 1829.

It is claimed by the petitioners that the relation of the government to the Indians is similar to that of guardian to his ward; and it is,

therefore, bound for necessities furnished. If so, those who claim to have furnished necessities must prove the necessity, (Chitty Cont., 117, and cases there cited,) and that the government has funds of these wards in possession to pay the debt. But we deny the existence of that relation, and contend that the duty of the government to the Indians is one of imperfect obligation, and one which Congress only can acknowledge and discharge.

The solicitor denies that Johnston had authority to purchase the flour from Belt & Co.

He denies that the Indians for whom it was purchased needed it for their subsistence.

And he denies that any of it ever came into the possession of any officer or agent of the United States.

JNO. D. McPHERSON,
Deputy Solicitor.

IN THE COURT OF CLAIMS.

C. V. STUART *vs.* THE UNITED STATES.

LORING, J., delivered the opinion of the Court.

The petitioner claims as the assignee of George W. Belt & Co., merchants and licensed traders to the Indians on the reservation between the Tuolumne and Mercedes rivers, and the claim is for supplies of food furnished to the Indians on that reservation, from August 5, 1851, to January 31, 1852, by Belt & Co., upon a contract made with them by Adam Johnston, sub-Indian agent for the San Joaquin valley, on the part of the United States.

The making of the contract is testified to by Mr. Johnston in his deposition, (answers to 6th and 7th direct interrogatories,) in which he says that he contracted with Belt & Co. for beef and flour, to be delivered in such quantities as in his judgment the necessities of the Indians at the reservation might require.

The delivery of the beef is testified to by Mr. Johnston and P. T. Smith. Mr. Johnston, in his deposition, (answers to 6th, 7th, 8th direct, 4th, 5th, 8th, 22d, 28th, 29th, 30th, 31st, and 32d cross-interrogatories,) states that the articles specified in exhibit No. 1 were delivered in his presence, and that he was present at the delivery of some portion of the articles specified in the other exhibits, Nos. 2, 3, 4, 5, respectively, but the particular items delivered in his presence he cannot specify; that at times deliveries of provisions were made in his necessary absence on the business of the reservations, and that in such cases he satisfied himself of the delivery from the persons employed to make it, and others present, before signing the receipts, which he verifies.

Mr. T. P. Smith, who was in the employ of Belt & Co., testifies (answer to 5th direct interrogatory) to the delivery of beef and flour to the Indians. Answer 7th, direct, he says: The beef was killed two or three times a week; there was sometimes one, sometimes three,

but mostly three at each killing. I have seen bags of flour delivered to the Indians, but not much; I was not where I could see it.

It is observable that exhibit No. 1, (Johnston's deposition,) is altogether for supplies "furnished a party of Stanislaus Indians, and a party of Four Creeks Indians, while on a visit to this reservation," and the charge for these is \$462 81, and the exhibit specifies that they were delivered "as per verbal order." The supplies specified in the other exhibits are stated to have been delivered "to the Indians on the Mercedes and Tuolumne rivers" *as per contract*, and the amount of deliveries from December 1 to December 31, 1851, is nearly double the amount delivered in any other month, and Mr. Smith (answer 7th and 8th cross) says there was a feast in December which lasted a week, and in which they must have killed nine beasts, and he said "several bags of flour, weighing 200 pounds each, given to the Indians." Mr. Smith refers to two or three other feasts, but whether these were before or after August 5, 1851, does not appear.

Mr. Johnston, in his deposition, (24th cross,) states that there were on the Tuolumne and Mercedes rivers about 950 Indians, and that other Indians came there, as well as wild Indians from the mountains, and that distribution was made to all, according to their actual necessities.

Mr. Johnston testifies, (answer 26th cross,) sometimes two or three days would intervene between the deliveries, and sometimes more. Mr. Smith testifies that the beef was killed "two or three times a week." The exhibits (2, 3, 4,) represent the deliveries at regular intervals of a week. It appears from the evidence (Doc. 4, pp. 69 and 70) that the Indians were, under the first treaty made by the three commissioners, removed on to the reservation, March 20, 1851. In Doc. 4, p. 89, it is stated that Mr. Johnston left the commissioners to proceed to the Indian settlement between the Mercedes and Tuolumne rivers, to supply the Indians with such food as may be actually necessary. It is shown (Doc. 4, p. 95; Doc. 61, p. 11) that in April and May Mr. Johnston received from the commissioners forty head of cattle for these Indians, and the evidence does not show what supplies, or that any supplies, were thereafter furnished for them by the commissioners. (The 1,900 head of cattle delivered to Mr. Johnston by Commissioner Barbour, Doc. 61, p. 113, were for the Indians south of the Chouchilla river. Doc. 61, p. 11; Doc. 4, p. 259.)

And the evidence shows that the food for which this claim is made was contracted for by Mr. Johnston on his own authority merely, and that it was to supply the deficiencies in the amount furnished by the commissioners and stipulated in the treaties.

In his report of his transactions, made to the department, (Doc. 4, p. 104, June 24, 1851,) Mr. Johnston says, (pp. 105-'6,) speaking of the Indians: "They came from the mountains without food, depending upon the small amount allowed in their treaties, with the roots and seeds to be daily gathered by their females. These have been found wholly inadequate to their necessities. * * * *

"The consequences have been continual complaints for food, and I doubt not there has been some suffering among them.

"Under this state of things what was my duty? to say nothing of

humanity, under such circumstances, what was the best policy to be pursued by me for the interest of the government? *In the absence of authority*, and in view of the best interests of the government, I '*took the responsibility*' of furnishing *greater* supplies of beef to the Indians *than was stipulated in the treaties*, relying on the government for its payment in future."

In the same report, (Doc. 4, p. 106,) Mr. Johnston states: "Besides their original destitution on entering into the treaties, the Indians of the reservations are gradually swelling in numbers from the Monors or wild Indians from the adjacent mountains. Those are as destitute as their friends, and must be fed or they will return to their covert places in the mountains, and depend upon thieving and plunder for subsistence."

On August 12, 1851, the department acknowledges the receipt of Mr. Johnston's report, and in reply they instruct him, (Doc. 4, p. 21 :) "The motives which prompted you to furnish *additional subsistence* to the Indians, and employ a physician to vaccinate them and prescribe for the diseased among them, are duly appreciated by this office, and as there are no appropriations now applicable to such expenditures, the department will recommend the subject to the favorable consideration of Congress, that such action may be had by that body as shall provide for them."

This case is the same in principle as the case of Samuel J. Hensley vs. The United States, heretofore decided by this Court, and for the reasons and considerations therein stated we are of opinion that the petitioner is not entitled to the relief he prays for.